IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.3874 OF 1995

Sou.Nalini Gangadhar Anusthane — Petitioner
Vs.
Maharashtra Shikshan Prasarak Mandal & ors. — Respondents

Mr.A.A.Garge with Mr.V.P.Navare for petitioner.
Mr.V.S.Gokhale, AGP for Resp.Nos.3 and 4.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

March 31, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. In this petition filed under Article 226 of the Constitution the petitioner prays for directions to pay her all arrears of pension and other retiral benefits by holding her eligible for receiving the pensionary benefits while she worked as an Assistant Teacher in a primary school and retired on 1st April 1993.

2. As per the petitioner she passed her S.S.C. in 1956 and thereafter completed the P.T.C. Course from Amravati. She was appointed as Arts Teacher in 1957 in Kalyan Yojana Samiti in Akola District. Thereafter she was appointed as a Teacher for 5th standard in I.E.M. School, Karanja in Akola District during 1957-58. Again she worked as a teacher for 5th to 8th Standards in Prakash High School, Nagpur

for the year 1960-61. She worked as head teacher in Sanskar Kendra run by the Prohibition Department of the State Government at Prabhadevi from 1961 to 1968. She could not continue to work in the Sanskar Kendra on account of her husband's transfer till the year 1977. She was appointed as Assistant Teacher in J.K. Pansare Primary Marathi School, Dombivli between 6th June 1977 to 6th July 1978. She came to be appointed for the first time as Assistant Teacher on temporary basis in Maharashtra Vidyalaya, Ramnagar, Dombivli run by the 1st respondent Institution as per the appointment letter dated 1st June 1978 and the said appointment was on temporary basis from 9th July 1978 till 31st May 1979. However, her service was continued upto 31st May 1980. She claims that without any further letter her service was continued till she retired on 31st March 1993 on attaining the age of 58 years and at the time of retirement her basic salary was Rs.1400/-.

3. At the time of her appointment in Maharashtra Vidyalaya, Ramnagar in June 1978 she was age bar and unless the Respondent No.3 - State had approved her appointment by relaxing her age, she could not have been retained in service as an Assistant Teacher and,

therefore, it appears that after her retirement she started approaching the Respondent No.3. She claims to have submitted representations on 7th January 1993, 17th July 1993 as well as 19th March 1994 and there was no response. Therefore, she approached this Court in Writ Petition No.1498 of 1995 seeking relief for directions to grant her relaxation in age at the time of her appointment in June 1978. The petition came to be disposed off on 30th March 1995 by directing the Respondent No.3 to take a decision on the representations made by the petitioner in regard to relaxation of her age limit. By a communication dated 26th May 1995 the Deputy Director of Education, Nashik Region informed the Government Pleader of this Court that the petitioner's request for relaxation in age was accepted but her further request for pensionary benefits was turned down as she was not a qualified teacher when she was appointed in June 1978. Being aggrieved by this communication / decision the petitioner has come before us in the second round.

4. Qualifications for primary teachers are set out in Schedule-B, Clause I to the MEPS Rules, 1981. Appointment to the post of Assistant Teacher in

Primary school shall be made from amongst the candidates who possessed SSC qualifications and in addition the Primary Teachers Certificate Examination or Diploma in Education (Pre Primary of two years' duration). The note in the said clause further states that a person holding a Diploma in Education (Pre Primary of two years' duration) shall be qualified to teach standards I to IV only. As per Rule 4 in Schedule-B Clause I, primary school teachers recruited prior to 30th June 1972 and who are possessing academic and training qualifications according to the Rules in force at the time of their appointment are exempted from the SSC and D.Ed. qualifications. However, those teachers who were recruited after 30th June 1972 and who did not possess SSC and training qualifications were required to acquire the same before June 1985 and failure to acquire these qualifications before June 1985 shall make them liable for termination of their services.

5. In the instant case by the petitioner's own contentions she worked in 1957-58 in IEM School, Karanja; Prakash High School, Nagpur in the year 1960-61; under the Sanskar Kendra run by the Prohibition Department from 1961 to 1968, and in

J.K.Pansare Primary Marathi School from 6th June 1977 to 6th July 1978. It is doubtful whether the Sanskar Kendra could be treated as school within the meaning of the said term defined under the MEPS Act, 1977 and it is clear that the petitioner was working intermittently as a teacher. As per the petitioner's contentions her service as Assistant Teacher in a recognised school commenced from June 1978 as per the appointment order issued by the Respondent No.1 and she retired on 31st March 1993. She did not possess the training qualifications inasmuch as PTC Course completed by her could not be held to be equivalent to D.Ed. or a Primary Teachers Certificate Examination and the issue having been referred to the respondent no.3 it was noted that she did not possess the requisite qualifications. She was required to obtain the training qualifications before June 1985 which she did not.

6. The affidavit-in-reply filed on behalf of the respondent no.3 further shows that the school where the petitioner worked as Assistant Teacher and was run by Respondent No.1 was an un-aided school till the academic year ended 1988 and the said school started receiving grant in aid for the first time

from the academic year 1988-89. The school authorities did not send the petitioner's proposal for approval as Assistant Teacher after the school became an aided school and, therefore, it was not possible for the concerned authorities including the Education Officer (Primary) to examine whether the petitioner fulfilled the educational qualifications for appointment as an Assistant Teacher. The respondent no.3, as per the directions issued by this Court in the earlier petition, has decided the issue of granting relaxation in age when she was appointed in June 1978 but that by itself would not entitle the petitioner for pensionary benefits. If she was not a qualified teacher, she was not entitled to be retained in service and Rule 4 of Schedule-B, Clause I to the MEPS Rules, 1981 clearly shows that her services were required to be terminated if she had failed to acquire the requisite training qualifications before June 1985. Her retention in service from July 1985 by the respondent no.1 was against the Rules and, therefore, the authorities have rightly denied her the pensionary benefits. We are satisfied that the relief prayed for cannot be granted to the petitioner.

7. The petition is, therefore, dismissed. Rule discharged. No costs.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)